

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES J. FARNAN,

Plaintiff,

v.

HENRY RICHARDS, BEV WILSON,
DANIEL YANISCH,,

Defendants.

Case No. C04-5618RBL

REPORT AND
RECOMMENDATION

Noted for May 13, 2005

This § 1983 Civil Rights matter has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This matter comes before the court because plaintiff has failed to respond to defendant's motion to dismiss, (Doc.15). For the reasons set forth below, I recommend that the Court grant defendant's motion to dismiss plaintiff's causes of action.

DISCUSSION

Local Rule CR 7(b)(2) requires each party opposing summary judgment to file a response not later than 4:30 p.m. on the Monday immediately preceding the Friday appointed for consideration, and Local Rule CR 7(b)(2) states, in part:

If a party fails to file papers in opposition to the motion, such failure may be considered by the court as an admission that the motion has merit.
(Emphasis added).

Here, defendants filed their motion for dismiss on December 20, 2004, and the motion was properly

1 noted for consideration on the court's January 14, 2005, motion calendar. Defendant's give proof that the
2 motion was faxed and a hardcopy was mailed to plaintiff. Noting that plaintiff had failed to respond to
3 their motion, defendants filed a reply brief, which also appears to have been properly served on plaintiff.
4 To date, plaintiff has failed to respond the dispositive motion.

5 Defendants' motion to dismiss raises a statute of limitations defense and the issue of court
6 jurisdiction based on plaintiff's alleged failure to successfully challenge the fact and duration of his
7 confinement via a writ of habeas corpus prior to seeking any cognizable damages as sought in this
8 Complaint in this matter. In support of their motion to dismiss, defendants cite adequate legal authority
9 and documentation supporting their arguments. Without rebuttal evidence or argument, the Court should
10 find defendants' arguments persuasive. Without any opposition brief, the court should find plaintiff admits
11 defendants' motion has merit.

12 CONCLUSION

13 Because plaintiff has not responded to defendant's motion to dismiss and defendants have offered
14 sufficient evidence to support their motion for summary judgment, the Court should GRANT defendants
15 motion and plaintiff's causes of action should be dismissed.

16 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
17 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P.
18 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
19 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
20 set the matter for consideration on **May 13, 2005**, as noted in the caption.

21 DATED this 21st day of April, 2005.

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23 /s/ J. Kelley Arnold
J. Kelley Arnold
U.S. Magistrate Judge
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